IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE.

CRIMINAL APPLICATION NO. 1359 OF 2005

Dr. Keki Hormusji Gharda & ors ...Applicant

versus

Meherwan Rustam Irani and anr. ...Respondent.

Shri Shirish Gupte with Subodh Desai for the applicant.

Shri D.R.More APP for State.

CORAM; V.G. PALSHIKAR, J.

DTAED; 16TH JUNE, 2005.

P.C.

1. By this petition, the petitioners seek quashing of a criminal complaint filed in the year 1999, now in the year 2005. Apart from the fact that it is grossly delayed, averments made in the complaint at pages 25 and 27 in relation to accused nos.1 to 5 and 12, if proved, may amount to a criminal offence. In such circumstances, no interference is called for at this stage. It being open to all the accused persons to point out the learned trial Judge u/s. 255 of Cr.P.C. that without evidence or inspite of the evidence led, no case is made and accused persons are entitled to acquittal u/s. 255 of Cr.P.C.

2. There is yet another aspect which has to be considered while dealing with the proceedings for quashing a criminal complaint filed u/s 200 Cr.P.C. when section gives a right to a person to make a complaint on certain criminal offence is made out against that person. Sec. 202 permits the Magistrate to dismiss the complaint outrately as there is no case made out after verification is recorded. Sec. 254 which deals with trial of the summary cases, provides that the Magistrate shall hear the prosecution as also the defence and permit them to lead such evidence as it necessary. That being the scheme of the act in relation to provide a finding to quash a complaint when it is denied the right of the complainant u/s. 200 Cr.P.C. to bring before the court evidence which according to him is adequate for the purposes of demanding conviction of the accused persons named in the complaint for the offences alleged. The rights, both of the complainant as also the accused are equally important. Merely all allegations in the quashing petition when no offence is made out, quashing of the same would be tampering the right of the complainant to lead evidence as required under sec. 254 of Cr.P.C. In such circumstances, I see no reason to interfere. Application is dismissed.

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